

1 VINCENT J. BELUSKO (Bar No. 100282)  
2 VBelusko@mofo.com  
3 GREGORY B. KOLTUN (Bar No. 130454)  
4 GKoltun@mofo.com  
5 MORRISON & FOERSTER LLP  
6 707 Wilshire Boulevard  
7 Los Angeles, California 90017-3543  
8 Telephone: 213.892.5200

9 Attorneys for Defendant and Counterclaimant  
10 NANOPRECISION PRODUCTS, INC. and  
11 Counterclaimants MICHAEL K. BARNOSKI,  
12 ROBERT R. VALLANCE,  
13 SHUHE LI, and  
14 KING-FU HII

John V. Picone III (State Bar No. 187226)  
Jeffrey M. Ratinoff (State Bar No. 197241)  
C. Gideon Korrell (State Bar No. 284890)  
HOPKINS & CARLEY  
A Law Corporation  
The Letitia Building  
70 S First Street  
San Jose, CA 95113-2406

*mailing address:*  
P.O. Box 1469  
San Jose, CA 95109-1469  
Telephone: (408) 286-9800  
Facsimile: (408) 998-4790

15 Attorneys for Plaintiffs and Counter-  
16 Defendants AVAGO TECHNOLOGIES U.S.  
17 INC., AVAGO TECHNOLOGIES GENERAL IP  
18 (SINGAPORE), PTE. LTD and  
19 LAURENCE MCCOLLOCH

20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
22 **SAN FRANCISCO DIVISION**

23 AVAGO TECHNOLOGIES U.S., INC.;  
24 AVAGO TECHNOLOGIES GENERAL IP  
25 (SINGAPORE), PTE. LTD, LAURENCE R.  
26 MCCOLLOCH,

27 Plaintiffs,

28 v.

AVAGO TECHNOLOGIES LIMITED, USA;  
AVAGO TECHNOLOGIES U.S., INC.;  
AVAGO TECHNOLOGIES GENERAL IP  
(SINGAPORE), PTE. LTD; and LAURENCE  
R. MCCOLLOCH,

Defendant.

NANOPRECISION PRODUCTS, INC.;  
MICHAEL K. BARNOSKI; ROBERT R.  
VALLANCE; SHUHE LI; and KING-FU HII,

Counterclaimants,

v.

AVAGO TECHNOLOGIES LIMITED, USA;  
AVAGO TECHNOLOGIES U.S., INC.;  
AVAGO TECHNOLOGIES GENERAL IP  
(SINGAPORE), PTE. LTD; and LAURENCE  
R. MCCOLLOCH,

Counterdefendants

CASE NO. 3:16-cv-03737 JCS

**STIPULATION AND [PROPOSED]  
ORDER CONCERNING  
COUNTERCLAIMANTS' FIRST  
THROUGH FIFTH COUNTERCLAIMS**

1                   Avago Technologies U.S., Inc.; Avago Technologies General IP (SINGAPORE), PTE.  
 2 LTD; and Laurence R. McColloch (collectively, “Plaintiffs” or “Counterdefendants”), and  
 3 nanoPrecision Products, Inc. (“nPP”); Michael K. Barnoski; Robert R. Vallance; Shuhe Li; and  
 4 King-Fu Hii (collectively, “Counterclaimants”) hereby stipulate to and state as follows:

5                 1.       On October 17, 2016, Counterclaimants filed their Answer and Counterclaim  
 6 (Dkt. No. 23). The Answer and Counterclaim includes eight counterclaims: (1) breach of  
 7 contract, (2) misappropriation of trade secrets under California Civil Code Section 3426 et seq.,  
 8 (3) conversion, (4) specific recovery of personal property, (5) declaratory relief, (6) trade secret  
 9 misappropriation under the Defend Trade Secrets Act of 2016, (7) correction of named inventor  
 10 on the ’025 Patent, and (8) correction of named inventor on the ’360 Patent.

11               2.       On November 18, 2016, Plaintiffs filed their pending Motion to Dismiss  
 12 Counterclaimants’ First through Sixth Counterclaims (Dkt. No. 29). Part of the motion seeks the  
 13 dismissal or stay of the First through Fifth Causes of Action asserted in the Counterclaim based  
 14 on the doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800  
 15 (1976) because they are the same as claims asserted by nPP and pending in the Superior Court of  
 16 California in Santa Clara County (the “State Court Action”).

17               3.       For the purposes of this action only, the parties do not dispute that venue is proper  
 18 in this judicial district and that this Court has personal jurisdiction over the parties.

19               4.       Without waiving the parties’ respective rights and defenses in relation to the First  
 20 through Fifth Causes of Action asserted in the Counterclaim, the parties agree that the Court may  
 21 exercise supplemental jurisdiction over these counterclaims pursuant to 28 U.S.C. § 1337. In  
 22 order to conserve judicial and party resources, as well as to avoid a piecemeal determination of  
 23 the parties’ respective rights in relation to their dispute, the parties agree that the Court should so  
 24 exercise supplemental jurisdiction.

25               5.       If the Court agrees to exercise jurisdiction over the First through Fifth Causes of  
 26 Action asserted in the Counterclaim then (i) nPP will move to stay the State Court Action within  
 27 30 days and (ii) Plaintiffs will withdraw the portion of their pending motion to dismiss based on  
 28 the doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976),

1 with a reservation of rights to re-raise the issue should the court in the State Court Action decline  
2 to issue a stay.

3       6. Accordingly, the parties request that the Court order that:

4           (a) The Court exercises supplemental jurisdiction over Counterclaimants' First  
5 through Fifth Causes of Action asserted in their Counterclaim;

6           (b) The portion of Plaintiffs' Motion to Dismiss (Dkt. No. 29) requesting dismissal or  
7 stay of the First through Fifth Causes of Action asserted in the Counterclaim based on the  
8 doctrine of *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976) shall  
9 hereby be withdrawn without prejudice pending the court in the State Court Action issuing a stay;  
10 and

11           (c) nPP shall file a motion to stay the State Court Action within 30 days of the Court  
12 granting this Stipulation.

13

14 **IT IS SO STIPULATED.**

15

16 Dated: December 13, 2016

MORRISON & FOERSTER LLP

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By: /s/ Vincent J. Belusko  
Vincent J. Belusko

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19           Attorneys for Defendant  
NANOPRECISION PRODUCTS, INC.

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HOPKINS & CARLEY  
  
By: /s/ Jeffrey M. Ratinoff  
Jeffrey M. Ratinoff

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22           Attorneys for Plaintiffs  
AVAGO TECHNOLOGIES U.S., INC.  
AVAGO TECHNOLOGIES GENERAL IP  
(SINGAPORE), PTE. LTD  
LAURENCE R. MCCOLLOCH

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1 Pursuant to stipulation,  
2 **IT IS SO ORDERED.**

3  
4 Dated: 12/14/16



5 Honorable Joseph C. Spero  
6 Chief Magistrate Judge

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## **ATTESTATION OF E-FILED SIGNATURE**

I, Vincent J. Belusko, am the ECF User whose ID and password are being used to file this  
STIPULATION AND [PROPOSED] ORDER CONCERNING COUNTERCLAIMANTS'  
FIRST THROUGH FIFTH COUNTERCLAIMS. In compliance with Local Rule 5-1(i)(3), I  
hereby attest that Jeffrey M. Ratinoff has concurred in this filing.

6 || Dated: December 13, 2016

/s/ Vincent J. Belusko  
Vincent J. Belusko